

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in D.C. Official Code § 47-2851.20, hereby gives notice of the intent to adopt, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, a new Chapter 39 (General Contractor/Construction Manager) of Title 17 of the District of Columbia Municipal Regulations (DCMR). This rulemaking adds a new chapter 39 to create a new basic business license endorsement category for individuals or businesses engaged in general contracting or construction management.

The creation of this new license category was authorized by the Fiscal Year 2009 Budget Support Act of 2008, D.C. Law 17-219, effective August 16, 2008.

17 DCMR Chapter 39 is added to read as follows:

CHAPTER 39 GENERAL CONTRACTOR/CONSTRUCTION MANAGER

Secs.

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3901	Licensing of General Contractor/Construction Manager
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3900. GENERAL PROVISIONS

- 3900.1 Each person engaged in general contracting or construction management in the District shall apply to the Department of Consumer and Regulatory Affairs (Department) for a basic business license with a General Contractor/Construction Manager endorsement (license).
- 3900.2 A licensee shall conspicuously post the license on the premises indicated on the license, which shall be available for inspection by any duly authorized government official. A photocopy of the license shall be posted in a conspicuous place at each construction site maintained by the licensee.

- 3900.3 A licensee shall obtain any other basic business license and endorsements as required by District statute or regulation.
- 3900.4 No licensed General Contractor/Construction Manager shall hold himself or herself out or engage in business as a General Contractor/Construction Manager under any name other than the name appearing on his or her license; Provided, that nothing in this subsection shall prevent the use of a trade name if the name is contained in the license application and approved by the Director of the Department of Consumer and Regulatory Affairs (Director).
- 3900.5 No person shall include in any contract relating to general contracting or construction management work any provision waiving or purporting to waive any provision of this chapter. Any provision included in a contract which waives or purports to waive any provision of this chapter shall be void and of no effect.
- 3900.6 A license issued under this chapter is not transferable.
- 3900.7 A person who obtains a license under this chapter shall not be required to obtain a home improvement contractor license to engage in home improvement work, as that term is defined in 16 DCMR § 899.1; Provided, that the person engaging in such work complies with the requirements of 16 DCMR §§ 808, 810, and 811.

3901. LICENSING OF GENERAL CONTRACTOR/CONSTRUCTION MANAGER

- 3901.1 Application for a license issued under this chapter shall be made to the Director on a form prescribed by the Director.
- 3901.2 Licenses shall be of the following five (5) classes:
- (a) Class A – The holder of a Class A license is subject to no limitation as to the value of any single contract project.
 - (b) Class B – The holder of a Class B license is not entitled to engage in the construction of any single contract project of a value in excess of ten million dollars (\$10,000,000).
 - (c) Class C – The holder of a Class C license is not entitled to engage in the construction of any single contract project of a value in excess of five million dollars (\$5,000,000).
 - (d) Class D – The holder of a Class D license is not entitled to engage in the construction of any single contract project of a value in excess of two million dollars (\$2,000,000).
 - (e) Class E - The holder of a Class E license is not entitled to engage in the construction of any single contract project of a value in excess of five hundred thousand dollars (\$500,000).
- 3901.3 Each application shall be signed by the owner or authorized representative of each business and shall correctly set forth the information required on the application form.

- 3901.4 Each application shall list all jurisdictions where the applicant is licensed to engage in the business of general contracting or construction management and if any disciplinary actions have been taken against the applicant in any other jurisdiction. This includes any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in any jurisdiction.
- 3901.5 Each application shall include a credit report from a credit reporting agency that is subject to oversight by the Federal Trade Commission and a statement of all outstanding judgments against the applicant.
- 3901.6 The credit report required by § 3901.5 shall be submitted by:
- (a) The business; and
 - (b) Any principal officers of the business and any person owning, directly or indirectly, twenty-five percent (25%) or more of the interest in the business; or
 - (c) Any sole proprietor.
- 3901.7 Any false statement contained in the application for license shall be grounds for the denial, suspension, or revocation of that license by the Director.
- 3901.8 Each license shall be valid for two (2) years.
- 3901.9 A licensee shall notify the Department of any change of address within thirty (30) days of the change.
- 3901.10 No license shall be issued to any applicant whose license under this chapter has been revoked for cause at any time within the last four (4) years. For any applicant other than a natural person, this provision shall apply to every principal officer and to any person owning, directly or indirectly, twenty-five percent (25%) or more of the interest in the applicant.
- 3901.11 A licensee shall notify the Department of any disciplinary action (as described in § 3901.4) taken against the licensee in any jurisdiction the licensee is licensed to engage in the business of general contracting or construction management within thirty (30) days of such action.
- 3901.12 All qualifications set forth in this chapter as prerequisite to the issuance of a license shall be maintained for the entire license period. Failure to maintain any qualification for license shall be cause for suspension or revocation of the license.
- 3901.13 The license number, and the class of license obtained, shall appear on every application for a building permit.
- 3902. INSURANCE**
- 3902.1 Prior to the issuance of a license, each applicant shall furnish to the Director a certificate of insurance, issued by an insurer authorized to insure in the District with

a credit rating of B+ or higher by A.M. Best Company, evidencing commercial general liability insurance as follows:

- (a) If the applicant is applying for a Class A license: limits of at least two and a half million dollars (\$2,500,000) per occurrence (primary or umbrella) for bodily injury and property damage arising in any way from the issuance of the license;
- (b) If the applicant is applying for a Class B license: limits of at least one and a half million dollars (\$1,500,000) per occurrence (primary or umbrella) for bodily injury or property damage arising in any way from the issuance of the license;
- (c) If the applicant is applying for a Class C license: limits of at least five hundred thousand dollars (\$500,000) per occurrence, one million dollars (\$1,000,000) in the aggregate combined single limit, for bodily injury or property damage arising in any way from the issuance of the license;
- (d) If the applicant is applying for a Class D license: limits of at least five hundred thousand dollars (\$500,000) per occurrence, one million dollars (\$1,000,000) in the aggregate combined single limit, for bodily injury or property damage arising in any way from the issuance of the license; and
- (e) If the applicant is applying for a Class E license: limits of at least five hundred thousand dollars (\$500,000) per occurrence for bodily injury or property damage arising in any way from the issuance of the license.

3902.2 Each insurance policy required under this chapter shall include a provision requiring thirty (30) days advance notice to the Director prior to cancellation or lapse of the policy. The licensee shall maintain the insurance required under this chapter in full force and effect for the duration of the license period.

3902.3 A single violation of this section shall be grounds for the Director to suspend or revoke the license.

3902.4 Each insurance policy required by this chapter shall name the District of Columbia Treasurer as an additional insured on a primary, non-contributory basis.

3903. EXAMINATION OF RECORDS

3903.1 The Director is authorized, in connection with the consideration of license applications and from time to time during the license period, during regular business hours, to require any applicant or licensee to make available to the Director such information as the Director considers necessary in determining or verifying whether the applicant or licensee has or retains the qualifications necessary for obtaining or retaining a license, or has violated or failed to comply with any provision of statute or regulation relating to the conduct of the licensed business or to obtaining or retaining a license.

3903.2 Failure to make information available to the Director; failure to furnish to the Director the information the Director is authorized to request by this section; or

failure to furnish to the Director or to permit the Director to make one (1) or more copies of such records maintained by the applicant or licensee as the Director may specify, shall be grounds for denial, suspension, or revocation of a license.

- 3903.3 The information required by this section to be furnished to the Director may, at the option of the applicant or licensee, be furnished to the Director at the Director's office or, upon notice to the Director, at the place of business of the applicant or licensee.

3904. ADVERTISING AND RECORDS

- 3904.1 In any advertisement, the licensee shall include his or her license number.

- 3904.2 All plumbing, gasfitting, electrical, or refrigeration and air conditioning work, or any combination of those services, to be performed under any contract between a property owner and a licensee, shall be performed in accordance with all of the requirements of the regulations applicable to that work, with particular reference to the use of qualified personnel (whenever required by the applicable regulations) in securing the permits and in the performance of the work.

- 3904.3 A licensee shall maintain a list that includes information about all permits obtained and all contractors or subcontractors performing work on any project permitted or requiring a permit under this chapter. Such list shall include the contractor or subcontractor's name and address, and if applicable, their license number. If requested by the Director, the licensee shall produce this list within forty-eight (48) hours of the Director's request.

3905. CONTRACTS

- 3905.1 A licensee shall print his or her license number legibly on the front page of every estimate, contract, and subcontract.

- 3905.2 No licensee, or any agent for the licensee, shall accept any payment for general contracting or construction management work to be performed for a property owner until after the understanding between the property owner and the licensee, or the licensee's agent, with respect to the work, has been reduced to writing in accordance with the provisions of this section.

- 3905.3 The contract shall be signed by the property owner and, as the case may be, either by the licensee, or other agent for the licensee subject to the licensee's approval.

- 3905.4 If the contract contains a provision that the contract shall not be binding until accepted by the licensee, the licensee shall within fifteen (15) days after the contract has been executed by the property owner, unless a later date is agreed upon between the licensee and the property owner, in writing, give the property owner written notice of acceptance or rejection.

- 3905.5 Notice of acceptance or rejection under § 3905.4 shall be delivered to the property owner personally, by first class mail, or by electronic mail.

- 3905.6 In case of rejection, any payment made by the property owner for any services that have not been rendered by the licensee shall be returned to the property owner with the notice of rejection.
- 3905.7 Each contract for general contracting or construction management work shall bear the licensee's name, address, telephone number, and license number.
- 3905.8 Each contract shall include a description of the terms of payment, the approximate date on which the work required by the contract is to start, and the approximate date on which the work will be completed, such starting and completion dates to be subject to change at the time the contract is accepted by the licensee and at no other time (except by written agreement between the property owner and the licensee), with notice of any such change to be set forth in the written notice of acceptance of the contract furnished to the property owner by the licensee.
- 3905.9 A contract may include a provision to the effect that the licensee shall not be liable for delays due to unforeseeable causes beyond the control of and without the fault or negligence of the licensee, including acts of God, or the public enemy, or of the property owner, fires, floods, strikes, freight embargoes, or unusually severe weather.
- 3905.10 A set of specifications shall be made part of the contract, either by inclusion in the contract or by being incorporated in the contract by reference, showing the work to be done and the materials to be used.
- 3905.11 There shall be no change in specifications without the written approval of the property owner.
- 3905.12 No licensee shall cause or permit any contract or other document relating to the performance of general contracting or construction management work to be signed by the property owner before all blank spaces are filled in with easily legible writing and the licensee has submitted to the property owner the completed contract or other document and given the property owner a reasonable opportunity to examine it.
- 3905.13 Each contract shall contain a notice in bold type no smaller than ten (10) point stating in substance that the property owner shall not sign the contract in blank and that the property owner is entitled to a copy of the contract at the time he or she signs.
- 3905.14 If the property owner has a prior existing unpaid account balance with the licensee which arose in the regular course of business and which is to be consolidated with the unpaid balance for the performance of general contracting or construction management work, then, as a separate transaction, the licensee may, within fifteen (15) days subsequent to the time the contract is signed by the property owner and not less than twenty-four (24) hours prior to commencing performance of the work, furnish the property owner with a written statement setting forth the consolidated balance due the licensee and the terms of payment.

3906. RECEIPTS

3906.1 Prior to the completion of the contracted work, a licensee that accepts any payment for the work shall promptly deliver to the property owner a receipt for that payment.

3906.2 If payment is made by check or U.S. Postal money order, no receipt need be delivered to the property owner.

3907. PERMITS

3907.1 Each licensee entering into a contract for the performance of any construction work for which a permit is required by applicable District law or regulation shall be responsible for taking such action as may be necessary to ensure that the work is performed only under the authority of the required permit and in accordance with all of its terms.

3908. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

3908.1 The Director may refuse to issue or renew, or may suspend or revoke, a license issued under this chapter for any reason set forth in this chapter or D.C. Official Code § 47-2844.

3908.2 All qualifications set forth in this chapter as prerequisite to the issuance of any license shall be maintained for the entire license period. Failure to maintain any qualification for a license shall be cause for suspension or revocation of the license.

3908.3 If the Director determines that a licensee is engaging in or has engaged in a pattern of substantial code violations, the Director may order a temporary suspension of any license issued pursuant to this chapter for a period not to exceed ten (10) days. Notice of the temporary suspension and the grounds for that suspension shall be immediately sent or delivered to the licensee at the address listed on the licensee's application. The licensee shall have an opportunity for a hearing before the Director prior to the expiration of the ten (10) day temporary suspension. If the Director determines by a preponderance of the evidence that a pattern of substantial code violations exists, the Director may suspend the licensee's license for a longer period of time or revoke the license.

3908.4 The grounds for denial, suspension, or revocation of a license include the following:

- (a) Material misstatement in application for license;
- (b) Failure or refusal to comply with any provision of statute or regulation governing the carrying on of the general contracting or construction management work;
- (c) Conviction of false pretenses, larceny after trust, embezzlement, or any other offense involving fraudulent conduct, arising out of or based on a general contracting or construction management contract;
- (d) Misrepresentation or concealment, through any subterfuge or device, or any matter required by this chapter to be stated to the property owner

or of the nature of any matter required by this chapter to be furnished to the property owner;

- (e) Employment of any fraudulent or misleading device, method, or practice in connection with the negotiation or performance of a contract for general contracting or construction management;
- (f) Use of advertising with regard to contracting for or performing general contracting or construction management work which is misleading or deceptive by reason of any false statement contained in that advertising or which, by reason of incompleteness or otherwise, may mislead or deceive;
- (g) Willful or fraudulent circumvention of any provision of statute or regulations relating to the conduct of the licensed business;
- (i) The unjustified failure or refusal of a licensee to substantially complete the work required by a contract within a reasonable time after the approximate date of completion specified in the contract; and
- (j) Working beyond the scope of the class of license issued under § 3901.2.

3908.5 Any advertising conforming with the then-current regulations, rules, or guides of the Federal Trade Commission shall not be deemed to be misleading or deceptive under § 3908.4(f).

3909. PENALTIES

3909.1 Each licensee shall be liable for all penalties provided for violation of any of the provisions of this chapter, whether the violations are committed by the licensee or the licensee's agent or employee.

3909.2 Pursuant to D.C. Official Code § 47-2846, any person violating any provision of this chapter shall, upon conviction, be fined not more than three hundred dollars (\$300) or imprisoned for not more than ninety (90) days, or both.

3909.3 Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of this regulation pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985. Adjudication of any infraction of this regulation shall be pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985.

3910. NOTICE OF PROPOSED ACTION AND APPEAL RIGHTS

3910.1 If the Department proposes to deny, suspend or revoke a license, a written notice shall be provided to the applicant or licensee, which states the proposed action and the basis for the proposed action.

- 3910.2 The notice required under § 3910.1 shall advise the applicant or licensee of the right to request a hearing within ten (10) business days (excluding Saturdays, Sundays, and legal holidays) from the date of the service of the notice.
- 3910.3 The notice shall advise that the action proposed or recommended will be taken at the expiration of ten (10) calendar days after service of the notice unless an appeal is taken.
- 3910.4 The notice shall be:
- (a) Served personally upon the applicant or licensee, or the applicant or licensee's agent; or
 - (b) Sent by first class mail to the home or business address of the applicant or licensee, or the applicant or licensee's agent, appearing on the application or license.
- 3910.5 A notice that is returned by the post office for reason of refusal of the addressee to accept delivery, or incorrect address, is deemed to have been properly served on the addressee by mail.
- 3910.6 An applicant may not file a separate application for licensure under this chapter during the appeal process.

3911. HEARINGS AND APPEAL

- 3911.1 Any licensee on whom a notice has been served pursuant to § 3910 may file a written notice of appeal with the Office of Administrative Hearings (OAH).
- 3911.2 All hearings and appeals shall be conducted pursuant to the regulations promulgated by OAH. Any stay of an OAH decision that results in the revocation of a license shall be issued pursuant to the procedures set forth by OAH.

3999. DEFINITIONS

- 3999.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Director - the Director of the Department of Consumer and Regulatory Affairs.

Construction management – means any work performed by a construction manager.

Construction manager – means any person who, for a fee, is contracted to supervise and coordinate the work of design professionals and multiple general contractors, while allowing the design professionals and general contractors to control individual operations and the manner of design and construction. Services provided by a construction manager may include:

- (a) coordination, management, or supervision of design or construction;

- (b) cost management, including estimates of construction costs and development of project budgets;
- (c) scheduling for all phases of a project;
- (d) design review, including review of formal design submission and construction feasibility; and
- (e) bid packaging and general contractor selection; provided, that an owner who performs construction management himself or herself for his or her own residential property is not considered to be engaged in construction management for purposes of this chapter.

The term “construction manager” does not include any licensed engineer or architect acting within the scope of his or her license.

General contractor – means any person who, for a fee, is contracted to do construction on real property owned, controlled, or leased by another person of commercial, industrial, institutional, governmental, residential or accessory use buildings or structures. This also includes the remodeling, repair, improvement or demolition of these buildings or structures.

The term “general contractor” shall also include persons engaged in heavy construction (including highway, street, bridge, transmission line, marine facilities, and oil and gas structures construction, and dredging); land development (including blasting, test drilling, landfill, leveling, earthmoving, excavating, land drainage, and other land preparation); and the construction of new buildings.

The term “general contractor” does not include:

- (a) any subcontractor, employee, or agent working for or under the supervision of a general contractor licensed or required to be licensed under this chapter and acting within the scope of his or her contract, employment, or agency;
- (b) any person who merely furnishes materials or supplies for use at a construction site without fabricating them into, or consuming them in the performance of, the work of a general contractor;
- (c) any licensed engineer or architect acting within the scope of his or her license;
- (d) any person who does general contracting work on property that constitutes his or her primary residence, if that primary residence is a single-family dwelling;
- (e) any property owner who does minor nonstructural repairs on the owner’s property; and
- (f) a governmental entity for work upon premises owned by the governmental entity and performed by employees of the governmental entity.

General contracting – means any work that is performed by a general contractor.

The term “general contracting” shall not include work performed by licensed electricians, licensed plumbers and gasfitters, or licensed refrigeration and air conditioning mechanics, so long as the work performed by them is limited to that of their licensed profession.

Pattern of substantial code violations – means five (5) or more violations of the building code which imperil the public health, safety, or welfare, or two (2) or more violations of

any stop work order issued pursuant to this code, or any combination thereof involving five (5) or more violations of this code within any six (6) month period, at one (1) or more construction sites within the District managed or controlled by the licensee.

Property owner - any person or person's authorized agent who enters into a contract for the performance of general contracting work on property owned or occupied by that person.

Payment - the transfer, directly or indirectly, of any valuable consideration, and shall include, but not be limited to, the delivery of cash, promissory note, installment contract, other written promise to pay money, chattel mortgage, or deed of trust; Provided, that the term "payment" shall not include the promise to pay embodied in the contract itself.

Person - includes an individual, firm, partnership, joint stock company, corporation, association, incorporated society, statutory or common law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, committee, assignee, officer, employee, principal or agent.

Single contract project – means the total estimated cost of a project being undertaken by a general contractor or construction manager.

Subcontractor – means any person who contracts to perform construction-related services for a general contractor, a construction manager, or another subcontractor.

All persons desiring to comment on these proposed regulations should submit comments in writing to Helder Gil, Legislative Affairs Specialist, Department of Consumer and Regulatory Affairs, Suite 9400, 941 North Capitol Street, NE, Washington, D.C. 20002, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of the proposed rules can be obtained from the address listed above.